

-----Original Message-----

From: Tod Lewis
Sent: Friday, January 10, 2014 9:30 AM
To: 'F. Emmett Fitzpatrick, III'
Cc: Jon Piper
Subject: RE: City Select v Randall -- Class Notice proposed plan

We agree that if the Court allows fax notice then opt-out faxing by class members would be appropriate. We can make that change.

The name, address, fax and phone number information is contained on one or more of the B2B electronic media (e.g. hard drive or backup DVDs). I believe this was discussed at the most recent class cert hearing.

-----Original Message-----

From: F. Emmett Fitzpatrick, III [<mailto:FEF@flammlaw.com>]
Sent: Thursday, January 09, 2014 2:36 PM
To: Tod Lewis
Subject: Re: City Select v Randall -- Class Notice proposed plan

Tod:

I oppose your proposal to send notices by fax because it would cause the same alleged damage that is claimed in the Plaintiff's Complaint.

In the event that the Court permits you to fax the subject notices, I oppose your proposal to require opt-out notices to be returned by US mail. There is no legitimate basis for requiring objectors to use a different method of communication than the one used to contact them.

Please indicate whether you possess the names and addresses of the alleged class members, and if so, how and when that information was obtained and why mailing notices to them in the first instance would not be a superior method than faxing. If you do not possess that information, please indicate how you plan to obtain it within seven days of unsuccessfully trying to fax any particular number. Upon receipt of those answers I'll let you know if I have any additional objections. I don't have sufficient information to make that determination at the present time.

Emmett

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This transmission is confidential, privileged, and intended only for the specified recipient. Any unauthorized use, disclosure, or copying is prohibited and shall not constitute waiver of the attorney/client privilege. If you have received this transmission in error, please notify us immediately.

On Jan 9, 2014, at 2:11 PM, Tod Lewis <Todd@bockhatchllc.com<<mailto:Todd@bockhatchllc.com>>>> wrote:

Mr. Fitzpatrick:

Our proposal for notice will be for Class Notice to be sent via facsimile to each of the 29,113 unique fax numbers that Plaintiff's expert witness, Robert Biggerstaff, has identified were successfully sent advertising faxes in this case 44,382 times. If our efforts to fax those 29,113 class members are unsuccessful after (3) faxing attempts, then we would send notice by U.S. Mail within 7 days thereafter. Class members will be allowed 45 days to opt out of the class by mailing an opt out request to class counsel and the court.

In light of the Petition for permission to appeal that you filed on January 6, 2014, we think the court may prefer to continue resolution any disputes concerning the notice and notice plan until your PLA is resolved. In the meantime we are providing you this summary of our proposed plan in order to ascertain whether we may be able to reach agreement on the plan.

If our plan is agreeable with you we will proceed to send you a draft of the class notice so that we can work out the details.

If you oppose our proposed plan, we will ask the judge tomorrow whether he prefers to resolve those issues now, or wait until after the PLA is resolved. If you do object to this plan, please state the basis for your objections.

Please advise.

Tod Lewis
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